

LEGISLATIVE DIGEST
(Amended April 5, 2016)

[Police Code - Paid Parental Leave for Bonding with New Child]

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Existing Law

No City law requires employers to provide paid parental leave for bonding with a new child. Under the “California Paid Family Leave” program, employees who contribute to the California State Disability Insurance (SDI) fund are entitled to six weeks of partial (55%) pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or new foster child. The 55% wage replacement is funded by employee payroll contributions.

Amendments to Current Law

General Requirement

The proposed ordinance would, as of January 1, 2017, require San Francisco employers with 50 or more employees to provide partial wage replacement to employees taking leave to bond with a new child under the California Paid Family Leave program. It would require such employers to provide the remaining portion (45%) of the employee’s normal gross weekly wage (“Supplemental Compensation”) during the six-week leave period. On July 1, 2017, the ordinance’s partial wage replacement requirement would expand to employers with 35 or more employees, and on January 1, 2018, to employers with 20 or more employees.

Coverage

A “Covered Employee” entitled to Supplemental Compensation under this ordinance is an employee (1) who commenced employment with the Covered Employer at least 180 days prior to the start of the leave period, (2) who performs at least eight hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of the City, and (4) who is eligible to receive paid family leave compensation under the California Paid Family Leave law for the purpose of bonding with a new child.

Commencing with January 1, 2017, a “Covered Employer” under the ordinance is an employer with 50 or more employees, regardless of location. Starting on July 1, 2017, a “Covered Employer” would include employers with 35 or more employees, and on January 1, 2018, would include employers with 20 or more employees. All governmental entities, including the City and County of San Francisco, are exempt from the ordinance.

Supplemental Compensation Amount

During the leave period, Covered Employers would be required to provide Supplemental Compensation in an amount such that the California Paid Family Leave compensation plus the Supplemental Compensation equals but does not exceed 100% of the employee's gross weekly wage. Based on the current 55% wage replacement rate under State law, the ordinance would require employers to pay the remaining 45% of the employee's weekly wages during the leave period. If the State wage replacement rate were to change, the employer's Supplemental Compensation obligation would change accordingly. For example, if the State wage replacement rate increased to 75%, the employer's Supplemental Compensation rate would drop to 25%.

In cases where an employee has multiple Covered Employers, the Supplemental Compensation amount would be apportioned between or among the Employers based on the percentage of the employee's total gross weekly wages received from each employer. In cases where an employee works for a Covered Employer and a non-Covered Employer, the Covered Employer would be responsible only for its percentage of the employee's total gross weekly wages.

Maximum Weekly Benefit Limitation

The California Paid Family Leave program places a cap on the 55% weekly benefit amount for higher-earning workers. As of January 1, 2016, the State's "maximum weekly benefit amount" is \$1,129, which represents 55% of a person's weekly wages based on an annual salary of approximately \$106,740. Employees who earn more than \$106,740 per year therefore do not receive the full 55% of their salary under the State program.

An employer's Supplemental Contribution obligation under the ordinance would be proportionally capped by reference to the State maximum weekly benefit amount. Using the 2016 State rates, an employer's maximum weekly Supplemental Compensation amount under the ordinance would be \$924 per week. The State's maximum weekly benefit amount (\$1,129) is 55% of \$2,053; 45% of \$2,053 is \$924.

Use of Unused, Accrued Vacation Leave

To be eligible to receive Supplemental Compensation under the ordinance, an employee must agree to allow the employer (if the employer so chooses) to use up to two weeks of the employee's unused, accrued vacation leave to help satisfy the employer's obligation to pay Supplemental Compensation during the leave period.

Parenthetically, the California Paid Family Leave program allows an employer to require an employee to use up to two weeks of unused, accrued vacation as a precondition to the employee's initial receipt of Paid Family Leave. If the employer exercises that option under

State law, the employee must first take two weeks of vacation before starting the six-week family leave period, resulting in a total of eight weeks of leave. The ordinance would not prevent an employer from exercising that option, but would provide another option for the employer in addition to, or in lieu of, the State option, depending upon the amount of unused vacation leave that the employee in question has accrued.

Reimbursement

As a precondition of receiving Supplemental Compensation under the ordinance, an employee must sign a form agreeing to reimburse the full amount of Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily separates from employment within 90 days of the end of the employee's leave period and if the Employer requests such reimbursement in writing.

Reducing Employee Wages or Termination of Employee

- Reducing an employee's wages during the leave period or within 90 days of the employee's requesting or applying for California Paid Family Leave would give rise to a rebuttable presumption that it was done for purposes of reducing the amount of Supplemental Compensation required under the ordinance. The presumption could be rebutted by clear and convincing evidence that the wage reduction was done solely for another reason.
- Terminating an employee within 90 days of the employee's requesting or applying for California Paid Family Leave would give rise to a rebuttable presumption that it was done for purposes of avoiding the employer's Supplemental Compensation obligation under this ordinance. The presumption could be rebutted by clear and convincing evidence that the termination was done solely for another reason.
- If an employer terminates an employee during the leave period, the employer would be required to pay Supplemental Compensation for the remainder of the leave period.

Collective Bargaining Agreements

The requirements of this ordinance shall not apply to employees covered by a bona fide collective bargaining agreement ("CBA") if such requirements are expressly waived in the CBA in clear and unambiguous terms. In addition, the ordinance shall not apply to CBAs entered into before the effective date of the ordinance, but only until the CBA is extended or expires.

Administrative Enforcement Provisions

The Office of Labor Standards Enforcement ("OLSE") would implement and enforce the ordinance, including the following:

- **Workplace Notice:** Employers would be required to post a notice in the workplace informing employees of their rights under the ordinance.
- **Employer Records:** Employers would be required to retain records pertaining to the payment of Supplemental Compensation for a period of three years and make records available to OLSE on request.
- **Anti-Retaliation:** Employers would be prohibited from retaliating against employees for exercising their rights under the ordinance.
- **Penalties:** After a due process hearing, OLSE may order any appropriate relief including payment of Supplemental Compensation and monetary penalties.

Civil Enforcement

The City, or any person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in court against an employer for violating the ordinance at any time.

No person aggrieved by a violation of this ordinance, or any entity a member of which is aggrieved by a violation of this ordinance, may file a civil action for violation of this ordinance without first giving the City 90-days advance written notice. No such aggrieved person or entity may bring a civil action under this ordinance if, during the aforementioned 90-day period, the City brings a civil action alleging a violation, or OLSE informs the person or entity in writing that (1) it intends to initiate administrative enforcement for a violation of the ordinance or (2) it has determined that no violation occurred.

Operative Date: The ordinance would become operative on January 1, 2017.

Background Information

Many workers, particularly low-wage workers, cannot afford to take parental leave at only 55% wage replacement. This ordinance is intended to supplement California Paid Family Leave by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee's weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern over loss of income does not preclude parents in San Francisco from bonding with their new child.

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